(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

CIVIL REVISION APPLICATION NO. 30 OF 2004

Office Notes, Office Memoranda of Quorum, appearances,Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. P. A., Kamat, Govt. Advocate for the petitioners.

CORAM : A. P. LAVANDE, J.

DATE : 11th January, 2005.

P.C.

Heard Mr. P. A. Kamat, learned Government Advocate on behalf of the petitioners. By this Revision Application the petitioners take exception to the Order dated 7th August, 2004, passed by the Ad-hoc Additional District Judge, Mapusa (Fast Track Court) in Civil Suit

No.14/04.

2. The respondents herein filed the abovementioned suit against the petitioners herein seeking relief of declaration and damages. The petitioners filed written statement contesting the claim of the respondents and, on the basis of the pleadings of the parties, issues were framed. One of the issues, namely issue no.7 framed in the said suit is as under:-

> "Do the defendants prove that the suit is barred by res judicata?"

3. Before the matter was taken up for evidence the petitioners herein filed application dated 14th July 2004, for trying the said issue as a preliminary issue. The learned Ad-hoc Additional

District Judge, after hearing the parties by Order dated 7th August, 2004, dismissed the application holding that it would be necessary to permit the parties to lead evidence. The trial Court has exercised its discretion and has refused to try the issue as a preliminary issue. On the basis of the material available on record, I do not find any jurisdictional error committed by the trial Court so as to warrant interference by this Court in exercise of revisional jurisdiction. Needless to mention that the petitioners will be at liberty to lead evidence during the course of the trial and prove that the suit filed by the respondents is barred by res judicata. The discretion has been properly

exercised by the trial Court in refusing to try the issue as a preliminary issue.

4. In the result, therefore, I do not find any merit in this Revision Application and the same is summarily rejected, subject to the observations made above. The revision stands disposed of in the aforesaid terms.

A. P. LAVANDE, J.

mc.